

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	S1 00 Cr. 583 (DC)
v.	:	Filed: 5/2/01
WILLIAM GREENSPAN,	:	Violation: 15 U.S.C. § 1
Defendant.	:	

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SUPERSEDING INFORMATION

COUNT ONE -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America, acting through its attorneys, charges:

1. William Greenspan ("Greenspan") is hereby made a defendant on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

2. Greenspan resided in Edison, New Jersey. Greenspan was the director of purchasing at A. Bohrer, Inc. ("Bohrer").

3. Bohrer was a New Jersey corporation located in Moonachie, New Jersey. Bohrer primarily sold food, but also sold some non-food items.

4. The Board of Education of the City of New York ("NYCBOE") was the entity responsible for operating New York City's public school system, the largest in the United States. Its annual budgets, which approached \$10 billion, were funded by the federal, state, and city governments. It serviced a student population of

nearly 1.1 million and operated more than 1,500 facilities. It served approximately 640,000 lunches and 150,000 breakfasts every school day, the majority of which were subsidized by various government programs, primarily those programs established pursuant to the National School Lunch Act of 1946 and administered by the United States Department of Agriculture.

5. The NYCBOE solicited bids from, and awarded contracts to, vendors of food on a regular basis. The primary food contracts awarded by the NYCBOE were requirements contracts that obligated the vendors to supply and deliver food at the stated prices for the contract period. Both public and non-public schools purchased food pursuant to these contracts. Individual schools placed orders as needed, usually once or twice a week.

6. The NYCBOE sought separate bids, and awarded separate contracts, for the supply of a number of categories of food, including frozen food, produce, and groceries. Each of these bids and contracts was divided into parts, usually geographically by borough. The company bidding the lowest price for a particular part of a contract usually received an award for that part. The term of most of these contracts varied from three to six months. Toward the expiration of the contract period, the NYCBOE again solicited bids for the supply of food.

7. In addition to the contracts described in Paragraphs 5 and 6, the NYCBOE occasionally sought bids and awarded contracts for furnishing and delivering specified quantities of grocery and frozen food items to be warehoused.

8. The NYCBOE required bidders to certify, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or with any competitor.

9. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

10. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. They included Nicholas A. Penachio, Stuart Liberto, Alan R. Adelson, Thomas M. Ryan, Arthur Bohrer, David Salomon, John DiCarlo, Vincent DiCarlo, Frank H. Russo, Nick Penachio Co., Inc. ("Penachio Co."), Irving Liberto, Inc., West Side Foods, Inc., M & F Meat Products Co., DiCarlo Distributors, Inc., FHR, Inc., Selwyn Lempert ("Lempert"), Arthur Goldberg, Barry Mayer, Loeb & Mayer, Inc., Alan Schneider, Paul Schneider, Food Service Purchasing Agency, Inc. d/b/a Pennco, Leonard Nash, Bohrer, and John Doody.

II. TRADE AND COMMERCE

11. During the period covered by this Count, Bohrer and co-conspirators purchased substantial quantities of food, including frozen food, for resale to the NYCBOE from brokers, who ordered goods on behalf of Bohrer and co-conspirators from suppliers located throughout the United States. These suppliers commonly shipped the goods ordered by the brokers directly to Bohrer.

12. From approximately May 1996 until approximately April 1999, pursuant to contracts that are the subject of this Count, the NYCBOE purchased approximately \$126 million of frozen food from members of the conspiracy, including approximately \$17.7 million of frozen food from Bohrer.

13. The activities of the defendant and co-conspirators with respect to the sale of food, including the sale of frozen food pursuant to contracts that are the subject of this Count, to the NYCBOE were within the flow of, and substantially affected, interstate trade and commerce.

III. DESCRIPTION OF THE OFFENSE

14. From approximately May 1996 until approximately March 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

15. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of frozen food to the NYCBOE.

16. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the May 1996 opening of bids for contracts for the supply of frozen food to the NYCBOE for the period of July through December 1996, the defendant and co-conspirators met to discuss and agree to divide among themselves those contracts;

(b) From that point forward, until at least March 1999, the defendant and co-conspirators participated in meetings or conversations where they discussed and agreed how to bid so as to divide upcoming contracts to supply frozen food to the NYCBOE. These meetings were held at different sites in or near New York City, including the Crowne Plaza LaGuardia Hotel in Queens; the Ramada Inn or Courtyard by Marriott at LaGuardia in Queens; the offices of Penachio Co. in the Bronx; a meeting room available to the businesses operating at the Hunts Point Food Distribution Center in the Bronx; and a food trade show at the Meadowlands in East Rutherford, New Jersey;

(c) The defendant and co-conspirators designated which co-conspirators would be the low bidders, among the co-conspirators, on specified parts of contracts to supply frozen food to the NYCBOE;

(d) The defendant and co-conspirators discussed and agreed on the prices or price levels they would bid on specified parts of contracts to supply frozen food to the NYCBOE, and then bid accordingly. As a result, some of the members of the conspiracy sometimes raised the prices in their bids by 10% or more;

(e) The defendant and co-conspirators refrained from bidding or submitted intentionally high, complementary bids on specified parts of contracts to supply frozen food to the NYCBOE;

(f) The defendant and co-conspirators gave substantial amounts of cash to co-conspirator Lempert, an employee of Penachio Co., with the understanding that Lempert would use the cash to pay one or more potential bidders not to bid competitively on particular contracts to supply food to the NYCBOE;

(g) Co-conspirators John DiCarlo, Vincent DiCarlo, and DiCarlo, Inc. joined the conspiracy in approximately 1997. Prior to that time, DiCarlo, Inc. bid competitively on particular bids to supply food, including frozen food, produce, and groceries, to the NYCBOE. The defendant and co-conspirators initially discussed offering \$100,000 or more in cash to induce DiCarlo, Inc. not to bid competitively. Ultimately, Lempert, acting on behalf of the conspirators, reached an agreement with DiCarlo, Inc., that if DiCarlo, Inc. would stop bidding competitively for

contracts to supply frozen food to the NYCBOE, then arrangements would be made among the companies that supplied produce to the NYCBOE, including Penachio Co., for DiCarlo, Inc. to be the low bidder for future NYCBOE contracts to supply produce to schools in Manhattan;

(h) The defendant and certain co-conspirators shared the net profits earned on contracts to furnish and deliver specified quantities of frozen food items to be warehoused by giving each other money or free merchandise. For example, in 1997, after Bohrer had agreed to lose a contract let in November 1996 to furnish and deliver to the warehouse frozen food items, one of the winners, Irving Liberto, Inc., gave Bohrer 1,100 cases of pepperoni pizza, valued between \$35,000 and \$40,000; and

(i) Various co-conspirators falsely certified, under penalty of perjury, that, among other things, the prices in their bids had been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such prices, with any other bidder or competitor.

IV. JURISDICTION AND VENUE

17. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- SHERMAN ACT CONSPIRACY
(15 U.S.C. § 1)

The United States of America further charges:

18. Paragraphs 1 through 3 and Paragraphs 9 and 10 of Count One of this Information are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

V. THE RELEVANT PARTIES AND ENTITIES

During the period covered by this Count:

19. The Department of Citywide Administrative Services of the City of New York ("DCAS") was the agency that provided support to those city entities that served the public. DCAS became responsible for providing this support in July 1996 when it replaced the Department of General Services of the City of New York. Through its Division of Municipal Supply Services, DCAS conducted competitive bidding for the supply of necessary items, including food, on behalf of several municipal entities, including the Health and Hospitals Corporation ("HHC") and the Department of Juvenile Justice ("DJJ").

20. HHC operated 24 facilities, which included 11 acute care hospitals and 13 long-term care or diagnostic centers. HHC served approximately four million patients annually. HHC purchased approximately \$15 million of food each year.

21. DJJ provided temporary custody, care, and control of juveniles accused of committing delinquent or criminal acts and detained by police arrest or court

order. DJJ operated nine supervision and detention facilities, and also provided aftercare services and programs designed to prevent juvenile delinquency. DJJ recorded 1339 admissions during 1997, and provided aftercare and prevention programs that serviced 628 individuals during the same period.

22. DCAS solicited bids from, and awarded contracts to, vendors of food on a regular basis. The food contracts awarded by DCAS were requirements contracts that obligated the vendor to supply and deliver food at the stated prices for the contract period. Under these contracts, the municipal facilities placed orders as needed, usually once or twice a week.

23. DCAS sought separate bids, and awarded contracts, for the supply of a number of categories of food, including specified frozen foods. DCAS awarded separate contracts for each line item specified in its bids. The company submitting the lowest bid for a particular line item usually received the contract for that line item.

VI. TRADE AND COMMERCE

24. During the period covered by this Count, Bohrer purchased substantial quantities of food for resale to entities serviced by DCAS from wholesalers, who obtained their goods from suppliers located throughout the United States.

25. From approximately May 1998 until approximately March 1999, as a result of the conspiracy charged herein, DCAS awarded a contract for specified frozen foods to Bohrer for approximately \$304,000.

26. During the period covered by this Count, the activities of the defendant and co-conspirators with respect to the sale of frozen food to agencies serviced by DCAS, including the sale of frozen food pursuant to the contract that is the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

VII. DESCRIPTION OF THE OFFENSE

27. From approximately May 1998 until approximately March 1999, the exact dates being unknown to the United States, the defendant and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

28. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to rig the bids for and allocate portions of a contract awarded by DCAS for the supply of frozen food to facilities operated by HHC and DJJ.

29. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) Prior to the submission of bids for the May 19, 1998 bid opening, they discussed and agreed which co-conspirator, among the co-conspirators, would

be the low bidder to DCAS for particular items in the bid to supply frozen food to HHC and DJJ;

(b) They discussed and agreed on the prices to be contained within the bids to DCAS for the contract to supply frozen food to HHC and DJJ, and then bid accordingly; and

(c) They refrained from bidding or submitted intentionally high, complementary bids to DCAS for particular items in the contract to supply frozen food to HHC and DJJ.

VIII. JURISDICTION AND VENUE

30. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Information.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

Dated:

JOHN M. NANNES
Acting Assistant Attorney General

RALPH T. GIORDANO
Chief, New York Office

JAMES M. GRIFFIN
Deputy Assistant Attorney General

REBECCA MEIKLEJOHN

SCOTT D. HAMMOND
Director of Criminal Enforcement

DOUGLAS M. TWEEN

Antitrust Division
U.S. Department of Justice

MARY ANNE F. CARNIVAL

MARY JO WHITE
United States Attorney
Southern District of New York

DEBRA C. BROOKES

ELIZABETH PREWITT

Attorneys

Antitrust Division
U.S. Department of Justice
26 Federal Plaza, Room 3630
New York, New York 10278
(212) 264-0654